



**CLERKIN & SINCLAIR, LLP**  
ATTORNEYS AT LAW

Via Facsimile Transmission

Honorable Robert W. Sweet  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, NY 1007

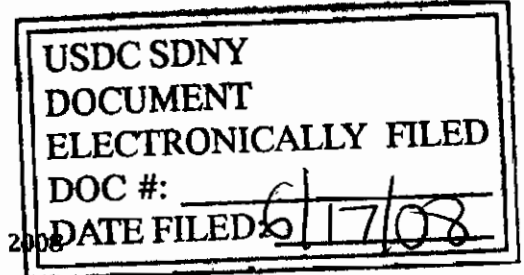
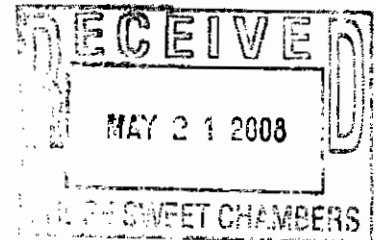
Re: New Horizon Church Ministry v. David Paterson  
S.D.N.Y. Case No. 08 CV 3842 (RWS)  
New Horizon Church Ministry v. Elliot Spitzer  
S.D.N.Y. Case No. 07 CV 9512 (RWS)

Dear Judge Sweet:

By order dated March 20, 2008, this court dismissed New Horizon Church Ministry v. Elliot Spitzer, Case No. 07 CV 9512 (RWS), for failure to prosecute, without prejudice. On April 23, 2008, the plaintiff filed New Horizon Church Ministry v. David Paterson, Case No. 08 CV 3842 (RWS). On or about May 12, 2008 the defendant sent a letter to you by fax requesting that you dismiss New Horizon Church Ministry v. David Paterson, Case No. 08 CV 3842 (RWS) pursuant to Rule 41 (b) of the Federal Rules of Civil Procedure. On May 13, 2008, you granted the defendants request and dismissed the case.

Federal Rules of Civil Procedure Rule 41(b) reads:

If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule — except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19 — operates as an adjudication on the merits.



May 20, 2008

*Treat as  
motion returnable  
June 3.*

*This motion  
is denied on the  
basis of the opposition  
set forth in the June  
5 letter of the Attorney  
General.*

*So ordered  
Sweet  
USDJ  
6-13-08*

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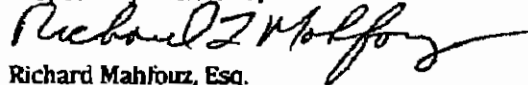
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The defendant either knowingly or unintentionally cited an inapplicable case (Plaut v. Spendthrift Farm, 514 U.S. 211) in its May 13, 2008 letter deceiving your Honor as to the applicable law. The district court in Plaut dismissed the case with prejudice for failure of the plaintiff to file its cause of action within the applicable statute of limitations period. Your Honor dismissed New Horizon Church Ministry v. Eliot Spitzer, Case No. 07 CV 9512 (RWS) without prejudice, thus allowing the plaintiff to refile its case.

Your Honor "stated otherwise" pursuant to Rule 41(b) by dismissing New Horizon Church Ministry v. Eliot Spitzer, Case No. 07 CV 9512 (RWS) without prejudice, giving the plaintiff the ability to refile its suit. See Lopez-Gonzalez v. Municipality of Comerio, 404 F.3d 548, 553. Further, the Lopez-Gonzales, citing Semtek Int'l. Inc. v. Lockheed Martin Corp., 531 U.S. 497, 505, 121 S.Ct. 1021, 149 L.Ed.2d 32 (2001), case stated "A dismissal without prejudice, as opposed to an adjudication upon the merits, "is dismissal without barring the plaintiff from returning later, to the same court, with the same underlying claim.""

Since the Plaintiff was not barred from filing New Horizon Church Ministry v. David Paterson, Case No. 08 CV 3842 (RWS) as New Horizon Church Ministry v. Eliot Spitzer, Case No. 07 CV 9512 (RWS) was dismissed without prejudice and thus was not an adjudication upon the merits, the Plaintiff requests New Horizon Church Ministry v. David Paterson, Case No. 08 CV 3842 (RWS) be reinstated and your Honor order the Defendant to answer the Plaintiff's complaint.

Respectfully submitted,



Richard Mahfouz, Esq.

Attorney for Plaintiff

Enclosure: Proof of Service of New Horizon Church Ministry v. David Paterson, Case No. 08 CV 3842 (RWS)

cc: Monica Connell, Esq. (Via Fax)